Supreme Court, U.S.
FILED

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No. ____

IN THE

Supreme Court of the United States

ETHEL KNIGHT KING A/K/A ANNIE ETHEL KING,
Petitioner,

v.

CITY OF BAINBRIDGE, GEORGIA,
Respondent.

Petition for a Writ of Certiorari to the Georgia Supreme Court

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PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the zoning ordinance of the City of Bainbridge, Georgia which for safety reasons, based entirely upon construction standards, restricts the placement of HUD stickered manufactured housing units within the corporate limits of the City to mobile home parks and/or mobile home subdivisions is constitutional.

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The Petitioner, Ethel Knight King a/k/a Annie Ethel King, respectfully petitions for a Writ of Certiorari to review the judgment of the Georgia Supreme Court upholding the constitutionality of a zoning ordinance of the City of Bainbridge, Georgia which excludes mobile homes (ordinance term) from all locations within the corporate limits other than mobile home parks or mobile home subdivisions (ordinance terms).

OPINIONS BELOW

The opinion of the Georgia Supreme Court is reported at 276 Ga. 484, 577 S.E.2d 772, (2003).

JURISDICTIONAL STATEMENT

The Georgia Supreme Court entered its judgment on March 10, 2003, (App. A) Motion for Reconsideration was denied

April 11, 2003 (App. B). The jurisdiction of this Court is invoked under 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISIONS INVOLVED

UNITED STATES CONSTITUTION

ARTICLE VI

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof, and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

FIFTH AMENDMENT

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger, nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall he be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

FOURTEENTH AMENDMENT

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the Untied States; nor shall any State deprive any person of life, liberty, or property, without due process or law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Petitioner owns a 2.24 acre parcel of land in Decatur County, Georgia. Though Petitioner's property is not entirely within the corporate limits of the City of Bainbridge, the city limits does run through Petitioner's parcel. Petitioner was not aware of precisely where the city limits traversed the subject property. Petitioner has never paid city property taxes on the subject property.

Petitioner obtained a mobile home permit, an electrical permit, and an air conditioning permit from the County and placed a mobile home on the subject property.

The City of Bainbridge has a zoning ordinance (App. C) which prohibits the placement of a mobile home ANY-WHERE within the corporate limits of city other than a mobile home park or mobile home subdivision.

When Petitioner did not remove the mobile home as the City demanded, a suit was filed against Petitioner. Petitioner answered the suit contending:

> "The ordinance sought to be enforced by this cause of action on its face, exceeds the police powers of Plaintiff and this violates substantive due process provisions of the U.S. Constitution as amended as well as the Constitution of the State of Georgia as amended."

After a hearing the trial court entered an Order (App. D) finding the ordinance constitutional and enjoining Petitioner from continuing to violate the ordinance. Petitioner appealed the trial court's order to the Georgia Supreme Court which affirmed the trial court (App. A). This petition followed.

REASONS FOR GRANTING THE PETITION

A single nationally authoritative decision is desirable to announce the law of the land not only to reinforce those lower court decisions which were correctly decided but to also let the air out of decisions in conflict therewith.

For example the decision of *Scurlock v. Lynn Haven*, 858 F.2d 1521,1525 (11th Cir. 1988) appears to be correctly decided, holding the City of Lynn Haven's zoning ordinance impairs the federal superintendence of the mobile home industry. Yet, other courts cite it for recognizing that a city could undoubtedly limit a particular residential zone to conventionally built residences, and exclude all mobile homes. *Burton v. City of Alexander City, Alabama*, 2001 WL 527415 (M.D. Ala. 2001) and *Lauderbaugh v. Hopewell Township*, 319 F.3d 568 (2003) (3rd Cir).

Manufactured housing is aberrant housing that is rationally disfavored. A city may exclude such homes altogether. *Barre Mobile Home Park, Inc. v. Town of Petersham*, 592 F. Supp. 633, 636 (D. Mass. 1984), aff'd, 767 F.2d 904 (1st Cir. 1985)

What lies behind a zoning ordinance? Safety and Construction standards, aesthetics, property value/tax base considerations, or is it a prejudice based upon economic capacity against those poor people who cannot afford better.

Petitioner submits that federally regulated housing cannot be constitutionally discriminated against based upon any of the foregoing reasons.

Burton (supra) and *Lauderbaugh* (supra) are not the only cases in conflict with *Scurlock* (supra). *Texas Manufactured Housing Assn. v. City of Nederland*, 101 F.3d. 1095 (5th Cir. 1996) and *Georgia Manufactured Housing Assn., Inc. v. Spalding County*, 148 F.3d 1304 (11th Cir. 1998) are said to involve ordinances intended to protect property values and promote aesthetics rather than regulate safety and construction standards. Such zoning ordinances actually impair federal superintendence of the mobile home industry when the ordinance excludes houses built to HUD specifications from being located within the corporate limits in favor of other manufactured homes built to more stringent construction standards.

Other cases which deny preemption include *City of Brookside Village v. Comeau*, 633 S.W.2d 790 (Tex. 1982); *CMH Mfg., Inc. v. Catawba County*, 994 F. Supp. 697 (W.D.N.C. 1988); *Gackler Land Co., Inc. v. Yankee Springs Tp.*, 427 Mich. 562, 398 N.W.2d 393 (1986).

In fact, the *Gackler* (supra), decision has been criticized by federal district courts in *Colorado Manufactured Housing Assn. v. Board of County Commissioners of Pueblo County, Colorado*. 946 F. Supp. 1539 (D. Colo. 1996) and *Michigan Manufactured Housing Assn v. Robinson Tp.*, 73 F. Supp. 2d 823 (W.D. Mich. 1999). These two courts took issue with the reasoning in *Gackler* that the ordinance was not preempted because its purpose was for regulating land use. The federal courts pointed out that under this reasoning, an ordinance could impose very strict building and safety standards for manufactured housing that clearly conflicted with the federal law, and preemption would be inapplicable because the ordinances overall "purpose" was regulating land use.

Going a step further, in *Texas Manufactured Housing Assn., Inc. v. City of Nederland,* 101 F.3d 1095 (5th Cir. 1996) even though the local ordinance and testimony established that manufactured homes that met the federal standards would not be allowed on private residential lots outside of trailer parks because such homes would not comply with the local building code. The court there held that the purpose of the ordinance was protection of property values and did not *expressly link* its provisions in any way to local safety and construction standards. Under this *Texas* (supra) reasoning only expressly linking an ordinance to safety and construction standards invokes preemption.

Given the current confused state of the law any given court on any given day can find a precedent for whatever decision it chooses to make.

In the instant case the factual situation is virtually identical to the *Scurlock* (supra) facts. Yet, the Georgia Supreme Court (less the two Justices who dissented based upon federal preemption) found the Bainbridge ordinance constitutional.

Testimony given by witnesses called by the City, including the city manager (App. D), established that the exclusive reason for the ordinance being adopted was safety. There was considerable testimony about mobile homes (ordinance term) not being built to the standards of the Southern Building Code, etc., that a mobile home was a torch waiting to be lit, but if a mobile home was built to comply with "those building codes" (referring to the Southern Building Code, the National Electric Code, the Standard Mechanical Code, the Georgia State Plumbing Code, and the Standard Plumbing Code) or had a DCA sticker rather than a HUD sticker it would be permitted. It is clear from the testimony that the ordinance is an effort to regulate construction standards of mobile homes.

CONCLUSION

This Petition for Certiorari should be granted to resolve conflicts in the holdings of many state and federal courts, to establish a national view of federal preemption concerning the regulation of construction and safety standards for manufactured housing units, and to protect the home ownership rights of poor people.

Respectfully submitted,

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